

Appl. No. : 09/870,402
Filed : May 30, 2001

REMARKS

Claims 33, 35, 40-42, and 48-67 are pending in this application. Claim 34 had been previously cancelled. Claims 1-32 and 36-39 are cancelled without prejudice as drawn to nonelected subject matter. Claims 43-47 are cancelled. Claims 33, 48, and 50 have been amended. New claims 62-67 have been added. Support for the amendments and new claims is found in the specification and claims as filed.

Claim Rejections - 35 U.S.C. §112, Second Paragraph

Claims 33, 35, and 40-61 have been rejected under 35 U.S.C. §112, second paragraph, as indefinite. Claim 33 has been amended to recite "[a] method of screening for a breast cancer marker in a patient." Claim 46 has been cancelled. Accordingly, Applicant respectfully requests that the rejections be withdrawn.

Claim Rejection - 35 U.S.C. §103(a)

Claims 33, 35, 40-42 and 53-61 have been rejected under 35 U.S.C. §103(a) as obvious over Hung (US 6,413,228) in view of Hung et al. (US 2002/0007115) and/or Nguyen (US 2002/0086341). To articulate a *prima facie* case of obviousness under 35 U.S.C. §103(a), the PTO must, *inter alia*, cite prior art that teaches or suggests all the claimed limitations. *In re Royka*, 490 F.2d 981 (C.C.P.A. 1974).

Independent Claim 33, the sole pending independent claim, recites a method of screening for a breast cancer marker in a patient, wherein one of the steps comprises removing carrier fluid from the duct using an intraductal breast fluid aspiration device, the device comprising, *inter alia*, a sample collector "wherein the sample collector maintains a low pressure contact with a distal surface of the nipple throughout a range of axial positions along the longitudinal axis of the second concavity."

The cited references, either alone or in combination, do not teach or suggest a method wherein intraductal breast fluid is collected using a screening device having a sample collector wherein the sample collector maintains a low pressure contact with a distal surface of the nipple throughout a range of axial positions along the longitudinal axis of a second concavity of the screening device. Accordingly, Applicant respectfully requests that the rejection be withdrawn.

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Conclusion

In view of the foregoing amendments and remarks, it is respectfully submitted that the present application is in condition for allowance. Should the Examiner have any remaining concerns that might prevent the prompt allowance of the application, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 8/15/03

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US 1033592003P1



Creation date: 18-08-2003
Indexing Officer: PRT1634 - GAU1634 PRINTER
Team: 1600PrintWorkingFolder
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Legal Date: 03-01-2003

No.	Doccode	Number of pages
1	CLMPTO	9

Total number of pages: 9

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